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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,732	11/09/2001	Sam H. Hay	HAYPAT7	7367
20115	7590	02/10/2006	EXAMINER CHOOBIN, BARRY	
MARK CLODFELTER 555 SPARKMAN DRIVE SUITE 1602D HUNTSVILLE, AL 35816			ART UNIT	PAPER NUMBER 2623

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/037,732	HAY, SAM H.	
	Examiner	Art Unit	
	Barry Choochin	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 December 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 18 is/are allowed.
 6) Claim(s) 1,5-7,9,10,12-14 and 17 is/are rejected.
 7) Claim(s) 2-4, 8-11, 15 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/02/2005 have been fully considered but they are not persuasive.

As to claim 1, applicant argues that the cited prior art fails to teach or fairly suggest using plurality of algorithms to statistically determine a plurality of parameters (page 2 of remarks).

The Examiner disagrees. Hay et al discloses plurality statistical operations and summing the results (column 18, lines 21-63 and fig.12a-12b).

Please note that by definition much of ordinary arithmetic as traditionally taught consists of algorithms involving the fundamental operations of addition, subtraction, multiplication, and division. An example of an algorithm is the common procedure for division, e.g., the division of 1,347 by 8, in which the remainders of partial divisions are carried to the next digit or digits; in this case the remainder of 5 in the division of 13 by 8 is placed in front of the 4, and 8 is then divided into 54.

Accordingly, the Examiner believes that the claim 1 of instant application is anticipated by the cited prior art.

As to independent claim 14, applicant's amended claim 14 relies upon performing statistical calculations using a plurality statistical algorithms on each retina reflex.

As addressed above said limitation is disclosed in cited prior art.

As to independent claim 16, applicant claims that the cited reference fails to disclose “series of statistical calculations” and further claims, “the specification necessarily informs the proper construction of the claim”.

The Examiner disagrees. As to “series of statistical calculations” please refer to same evidence presented above for claims 1 and 14.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., series of statistical calculations as defined by applicant's specification) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Currently claims 1-18 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, 6, 7, 9, 10, 13, 14, 16, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by hay et al (US 5,632,282).

As to claim 1, Hay et al disclose a method for determining optical status of each individual eye of a pair of eyes of a subject comprising the steps of (fig.3):

- A) Imaging both of said pair of eyes using a digital imaging device while utilizing a standard set of uniform imaging conditions and visual tasks while performing said imaging (column 12, lines 11-21),
- B) Isolating a retinal reflex from each of said pair of eyes (column 12, lines 11-21),
- C) Applying a series of algorithms to statistically determine a plurality of parameters related to each said retinal reflex (fig.12a-b).

As to claims 5 and 6, Hay discloses comparing said plurality of parameters from each said retinal reflex taken from said individual to a like set of parameters taken from a normal eye (see abstract lines 4-7).

As to claim 7, Hay discloses comparing said plurality of parameters from one of said retinal reflexes taken from said individual with parameters from the other of said retinal reflexes taken from said individual (see abstract lines 8-10).

As to claims 9, 10, Hay et al disclose superimposing said plurality of parameters from one of said retinal reflexes taken from said individual over said parameters taken from a normal retinal reflex (column 15, lines 35-65 and fig. 9c).

As to claim 12, Hay et al disclose selecting said algorithms based on their predictivity of eye disorders (fig. 12c).

As to claim 13, Hay et al disclose selecting said algorithms based on their predictivity of ocular balance between said retinal reflexes (fig.2b).

Claims 14 and 16-17 are similarly analyzed and rejected.

Allowable Subject Matter

4. Claims 2-4, 8, 11, 12, 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claim 18 is indicated allowable. The following is a statement of reasons for the indication of allowable subject matter: the cited prior art fails to teach or fairly suggest a method comprising the steps of summing values of those identical algorithms found in said clinical sub-groups to obtain statistical measurements and then performing a statistical analysis on said statistical measurements to obtain statistical data, utilizing said statistical data to define features in graphic format that characterizes values of the sub-group with a particular disease, in combination with other elements of independent claim 18.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

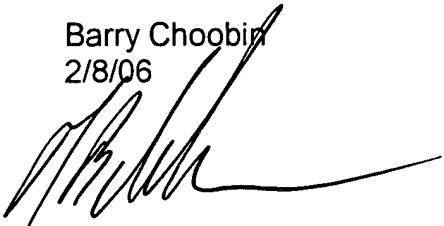
CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Choobin whose telephone number is 571-272-7447. The examiner can normally be reached on M-F 7:30 AM to 18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MATTHEW BELLA can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Barry Choobin
2/8/06

A handwritten signature in black ink, appearing to read "Barry Choobin". To the left of the signature, the date "2/8/06" is written vertically. The signature is written in a cursive, fluid style.